

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

BACILIO RUIZ and JOSE AMADOR, as  
individuals and on behalf of all other  
similarly situated persons,

Plaintiffs,

v.

MERCER CANYONS, INC.,

Defendant.

1:14-cv-03032-SAB

**ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
A PROTECTIVE ORDER ON  
IMMIGRATION STATUS  
DISCOVERY AND DENYING  
DEFENDANT'S MOTION TO  
COMPEL**

During the deposition of a named plaintiff, counsel for Defendant sought information that potentially implicated the plaintiff's immigration status. Defendant also put forth written discovery requests for other information that would potentially implicate immigration status. In response, Plaintiffs now seek an order prohibiting all discovery related to immigration status. ECF No. 35. Believing the information is relevant to the claims at issue, Defendant seeks to compel discovery regarding immigration status. ECF No. 39. The motions were heard without oral argument on November 14, 2014.

Federal Rule of Civil Procedure 26(b) allows discovery of "any nonprivileged matter that is relevant to any party's claim or defenses . . . ." Despite

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1 the general liberal thrust of federal discovery rules, Rule 26(c) permits a court to  
2 enter a protective order if a party demonstrates good cause for protecting that party  
3 from “annoyance, embarrassment, oppression, or undue burden or expense . . . ”  
4 Upon a finding that “particularized harm will result from disclosure of information  
5 to the public” a court must “balance[] the public and private interests [involved] to  
6 decide whether a protective order is necessary. *Phillips ex rel. Estates of Byrd v.*  
7 *General Motors Corp.*, 307 F.3d 1206, 1211.

8 Plaintiffs contend that immigration status is not an element of their claims  
9 and is irrelevant to the damages they seek. According to the plaintiffs, allowing  
10 such discovery would result in a chilling effect that burdens the public interest.  
11 Defendant, on the other hand, asserts that Plaintiffs are actually seeking to enforce  
12 provisions of the federal H-2A visa program. Defendant insists immigration status  
13 is relevant, arguing Plaintiffs will not have valid claims under the H-2A program  
14 unless they can demonstrate they are “eligible individuals” as defined in 8 U.S.C.  
15 § 1188(i)(1). Under that definition, eligible individuals do not include  
16 unauthorized aliens. Because immigration status is relevant under the H-2A  
17 program, Defendant argues it must also be relevant for Plaintiffs’ claims.

18 The H-2A program’s “eligible individual” requirement pertains to the  
19 requirements that must be met in order for a clearance order to issue. As  
20 Defendant points out, there is no private right of action directly under the H-2A  
21 program. Therefore, whether a litigant must be an “eligible individual” to bring  
22 suit directly for an H-2A violation is a philosophical exercise that this Court need  
23 not pursue.

24 Instead, Plaintiffs seek damages under the Migrant and Seasonal  
25 Agricultural Worker Protection Act (“AWPA”) and Washington Consumer  
26 Protection Act (“CPA”). Thus, the relevant question is whether a litigant’s  
27 immigration status affects his ability to bring claims under the AWPA or CPA.

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1 The AWPB provides protections for migrant and seasonal agricultural  
2 workers. A migrant agricultural worker is an individual who is “employed in  
3 agricultural employment of a seasonal or other temporary nature, and who is  
4 required to be absent overnight from his permanent place of residence.” 29 U.S.C.  
5 § 1802(8)(A). Migrant workers do not include H-2A workers. § 1802(8)(B)(ii). A  
6 seasonal agricultural worker is “an individual who is employed in agricultural  
7 employment of a seasonal or other temporary nature and is not required to be  
8 absent overnight from his permanent place of residence . . .” § 1802(10)(A). The  
9 AWPB contains no limitations regarding legal status of the employee. The CPA  
10 also does not contain any limitations premised on legal status. *See* RCW 19.86 *et*  
11 *seq.* Likewise, federal courts have repeatedly recognized that the AWPB protects  
12 documented and undocumented workers alike. *See In re Reyes*, 814 F.2d 168, 170  
13 (5<sup>th</sup> Cir. 1987) *cert. denied*, *Griffin & Brand of McAllen, Inc. v. Reyes*, 487 U.S.  
14 1235 (1988); *Rodriguez v. ACL Farms, Inc.*, 2010 WL 4683743 \*1 (E.D.W.A.  
15 2010); *Escobar v. Baker*, 814 F.Supp. 1491, 1498 (W.D.W.A. 1993). Rights  
16 derived from the AWPB and CPA can be asserted by any appropriate worker,  
17 regardless of their immigration status.

18 Additionally, Defendant had both the ability and the legal requirement to  
19 inquire into at least Plaintiff Ruiz’s immigration status when it hired him in 2013.  
20 This Court is not inclined to permit an employer to ignore immigration status and  
21 allegedly underpay workers only to assert the relevance of immigration status as a  
22 defense to subsequent lawsuits based on those actions.

23 Immigration status is irrelevant whether or not the non-statutory damages  
24 sought by Plaintiffs are best described as “backpay”—at least at this stage of  
25 litigation. The Supreme Court’s decision in *Hoffman Plastic Compounds, Inc. v.*  
26 *N.L.R.B.* has been interpreted narrowly to only prohibit the National Labor  
27 Relations Board (“NLRB”) from awarding of backpay under the National Labor

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1 Relations Act (“NLRA”) to undocumented workers. *Rivera v. NIBCO, Inc.*, 364  
2 F.3d 1057, 1066-67 (9th Cir. 2004). Because Plaintiffs’ claims under the AWP  
3 and Washington CPA more closely resemble the Title VII claims in *NIBCO* than  
4 the NLRA claims in *Hoffman*, any aggrieved workers—documented or  
5 undocumented—are likely eligible for “backpay” and shall be treated as eligible  
6 for purposes of discovery.

7 At this stage of litigation, the immigration status of Plaintiffs and putative  
8 class members is irrelevant and could result in intimidation that discourages  
9 Plaintiffs from pursuing their employment rights in court. Accordingly, Plaintiffs’  
10 Motion for a Protective Order on Immigration Status Discovery is **GRANTED**.  
11 Defendant is prohibited—with respect to Plaintiffs, class members, and their  
12 family members—all discovery related to immigration status which shall include,  
13 but is not limited to: place of birth, national origin, immigration documents,  
14 passports, visas, social security numbers or statements, tax identification numbers  
15 or other tax information, information from prior employers that may indicate  
16 immigration status, and information regarding entry into the United States. The  
17 Court may revisit the discoverability of immigration status if this litigation  
18 proceeds in such a manner to make it relevant.

19 Defendant filed a Motion to Compel Discovery, ECF No. 39, seeking  
20 answers to questions posed to Plaintiff Amador regarding his termination from a  
21 previous employer and questions posed to Plaintiff Ruiz regarding unemployment  
22 benefits. For the aforementioned reasons, this line of questioning does not appear  
23 to be reasonably calculated to lead to the discovery of admissible evidence and is  
24 prohibited by this Protective Order. Defendant’s Motion to Compel Discovery is  
25 therefore **DENIED**.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Plaintiffs' Motion for a Protective Order on Immigration Status  
3 Discovery, ECF No. 35, is **GRANTED**.

4 2. Defendant's Motion to Compel Discovery, ECF No. 39, is **DENIED**.  
5 **IT IS SO ORDERED.** The District Court Executive is hereby directed to  
6 enter this Order and provide copies to counsel.

7 **DATED** this 14th day of November, 2014.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

13 Stanley A. Bastian  
14 United States District Judge  
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